

Item # _____

Moved by: _____

Prepared by: Dottie Jones

Seconded by: _____

Approved by: _____
County Attorney

RESOLUTION APPROVING CONTRACTS FOR AUDITORS WORKING IN THE SHELBY COUNTY COMMUNITY SERVICES AGENCY WEATHERIZATION ASSISTANCE PROGRAM. THIS ITEM REQUIRES EXPENDITURE OF PREVIOUSLY BUDGETED STATE GRANT FUNDS IN THE AMOUNT OF \$1,500,000.00. SPONSORED BY COMMISSIONER EDITH ANN MOORE.

WHEREAS, Resolution #30 adopted June 1, 2009 by the Board of County Commissioners approved the Shelby County Government's Operating Budget for the grant expenditures funded by State of Tennessee Department of Human Services for the ARRA Weatherization Assistance Program; and

WHEREAS, This program requires the Shelby County Community Services Agency to contract with qualified auditors to conduct pre-audits on all qualified homes prior to granting weatherization assistance to low-income individuals in Shelby County; and

WHEREAS, The program requires that these contracted auditors also conduct post-audits after weatherization measures are performed on qualified homes; and

WHEREAS, The Shelby County Community Services Agency offered contracts to all qualified auditors in the Shelby County area to perform pre- and post-audits; and

WHEREAS, Exhibit A includes a list of the auditors that have signed contracts to perform pre- and post-audits for the ARRA Weatherization Assistance Program, a copy of which is attached hereto and incorporated herein by reference, and

WHEREAS, The contracted auditors will perform over 2,000 audits at a cost of \$500 each resulting in an expenditure of over \$1 million in state grant funds before the conclusion of the ARRA Weatherization Assistance Program; and

WHEREAS, The audits are assigned equally to all contracted auditors if said auditors accept the jobs and are able to perform the audits within the strict timeframe mandated by the program and the guidelines set by the State of Tennessee; and

WHEREAS, The capabilities of the contracted auditors vary and some auditors may

accept and perform more audits than others, which will result in the contracts for some auditors to exceed \$100,000; and

WHEREAS, Each contract will be for a maximum amount of not more than \$250,000 and the contractor shall only be authorized to perform services after a purchase order has been issued; and

WHEREAS, This resolution will not increase expenditures beyond the already budgeted amount in Fund 522-480218-6493 and all costs of this program are reimbursable by the grantor.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY TENNESSEE, That the Shelby County Board of Commissioners hereby approves contracts with the list of auditors on Exhibit A in the contract form attached as Exhibit B in amounts not to exceed \$250,000.

BE IT FURTHER RESOLVED, That the County Mayor is hereby authorized to execute any and all documents necessary to comply with the intent of this resolution.

BE IT FURTHER RESOLVED, That the County Mayor and Director of Administration and Finance be and are hereby authorized to issue their warrant or warrants to the extent of appropriations, made in this resolution, pursuant to the terms and conditions of said grant and to take proper credit in their accounting therefor.

Joe Ford, Interim Mayor

Date: _____

ATTEST:

Deputy Clerk of County Commission

ADOPTED: _____

SUMMARY SHEET

I. DESCRIPTION OF ITEM

The budget for the ARRA Weatherization Assistance Program was approved in June 2009 and included funding for the pre- and post-audits that are mandated by the program. Shelby County Community Services Agency offered contracts to all qualified auditors in the Shelby County area, a list that included more than 25 specially-trained auditors approved by the State of Tennessee. It was expected that the majority of these auditors would sign contracts with Shelby County, that audits would be distributed equally among the contracted entities and that no entity would require a contract greater than \$100,000.

However, not all auditors chose to contract with CSA. With over 2,000 audits to perform before the conclusion of the program at a total cost of over \$1 million, it is now expected that some auditors will require contracts greater than \$100,000. CSA requests permission to increase these contracts as needed.

This resolution will not increase expenditures beyond the already budgeted amount in Fund 522-480218-6493 and all costs of this program are reimbursable by the grantor.

II. SOURCE AND AMOUNT OF FUNDING

A. State Grant funding previously approved in the FY10 budget.

III. CONTRACT ITEMS

A copy of the ARRA Weatherization Assistance Program contract is attached.

IV. ADDITIONAL INFORMATION RELEVANT TO APPROVAL OF THIS ITEM

Exhibit A lists the contracted auditors. Exhibit B is the contract form. The administration recommends approval of this item.

Exhibit A

List of Contracted Auditors for ARRA Weatherization Assistance Program

Vendor Number	First Name	Last Name	Company	Address	City	Zip
A0106	Gregory	Taylor	Better Back Flow	P. O. Box 281445	Memphis	38168
A1788	Jack	Cowan	Cowanhouse	8105 Donnell Rd.	Millington	38053
A1791	Harold	Sterling	Sterling Inc	1495 Faxon Ave.	Memphis	38104
A1796	Darrell	Martin	DLM Investments	6099 Mt. Moriah Ext. 37	Memphis	38115
A1817	Russell	Ingram	Russell N. Ingram	1272 Graystone	Cordova	38016
A1833	Ibin	Moore	Ibin Moore	1500 Bell Trace Dr.	Antioch	37013
A1834	Jack	Woods	VCM, LLC	1750 Madison #100	Memphis	38104
A1836	Mike	Todd	Premiere Contractors Inc.	629 Monroe	Memphis	38103
A1838	Bill	Day	W.B. Day Construction	1750 Madison #100	Memphis	38104
A2009	Shepperson	Wilbun	S. Wilbun Company	757 West Dr.	Memphis	38112
A2034	Anita	Tate	Anita Tate	1601 Crider Street	Memphis	38111
A2067	Jeffrey	Blackledge	Jeffrey N. Blackledge	8394 Farmington Blvd.	Germentown	38139
A2173	Dwight	Treadwell	Tri-State Energy Audit	1780 Glenview Avenue	Memphis	38114

Exhibit B

WEATHERIZATION ASSISTANCE PROGRAM AGREEMENT FOR THE PERFORMANCE OF ENERGY AUDITS/REINSPECTIONS

THIS AGREEMENT made and entered into this _____ day of _____, 2010, by and between Shelby County Government, Community Services Agency, hereinafter referred to as the "Agency", and _____, hereinafter referred to as "Contractor".

The Tennessee Department of Human Services (TDHS) has allocated funds to the above-named Agency under the U.S. Department of Energy's (DOE) regular Weatherization Assistance Program and DOE's American Recovery And Reinvestment Act (ARRA) Weatherization Assistance Program to implement and supervise weatherization assistance services designed to improve the heating efficiency of certain structures owned or rented by persons eligible for benefits under the program, and

The above named Contractor agrees to perform the necessary energy audits to the eligible dwelling under the DOE Weatherization program.

Both parties agree as follows:

1. The Contractor shall commence and complete all WAP audits and/or reinspections within fifteen business (15) days from the date the Auditor is notified of the job (Reference Attachment A—Breaches and Liquidated Damages).
2. The Contractor shall perform the audits using the National Energy Audit Tool (NEAT) or the Mobile Home Energy Audit (MHEA) and/or other tools as approved by the Department of Energy and the State.
3. The Contractor shall report audit results electronically as prescribed by the Agency.
4. The Contractor shall perform, supervise, and direct the WAP audits and/or reinspections using his/her best skills and attention.
5. The Contractor shall be responsible to the Agency for the acts and omissions of the Contractor's employees.
6. The Contractor shall provide for all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution and completion of the WAP reinspections.

7. The Contractor shall comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the audits and/or reinspections.
8. The Contractor shall re-execute any WAP audit that in the opinion of the Agency fail to conform to the requirements of this agreement.
9. The Contractor shall permit the Agency or an authorized representative of the Agency to review the WAP audits and/or reinspections at any time during the progress of the work and before final payment is made.
10. The Contractor shall purchase and maintain liability insurance in the amount that will protect against claims which may arise out of or result from the Contractor's operations under this Contract. The Contractor shall, upon request from the Agency, provide documentation of current and valid insurance.
11. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Agency and its agents and employees from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from, whether directly or indirectly, the performance of the work, the enforcement of this Agreement, or any other source. In any and all claims against the Agency or any of its agents or employees by any employee of the Contractor, and subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or subcontractor under Worker's or Workmen's Compensation Acts, disability benefit Acts or other employment benefit Acts.
12. This Contract shall be governed by the laws of the State of Tennessee.
13. The Contractor and the Agency each binds himself, his partners, successors, assigns, and legal representatives to the other parties hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all, covenants, agreements, and obligations contained in this Agreement. Neither party to this Agreement shall assign this Agreement or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to come due to him hereunder, without the previous written consent of the Agency.
14. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
15. No action or failure to act by the Agency shall constitute a waiver of any right or duty afforded under this Agreement, nor shall any action or failure to act

constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

16. Upon submission of a correct and legible invoice from the Contractor, the Agency shall pay the Contractor for performing the audits and/or reinspections. In no event, regardless of cause, will the Agency pay for audits and/or reinspections not completed by the Contractor.
17. Violation of any of the conditions, provisions, or requirements of this Agreement by the Contractor shall give the Agency the option of immediately terminating this Agreement and any further payments thereunder, except for acceptable work performed prior to the violation.
18. This Agreement constitutes the complete and final agreement between the parties. Any amendments, modifications, additions, or changes thereto shall be voidable unless both parties give their written consent to such amendments, modifications, additions, and changes.
19. The Contractor shall be compensated for units of service authorized by the Agency, based upon the following payment rates:

Service Description	Amount
Pre-Audit	\$300.00
Post-Audit	\$200.00
Re-Inspection	\$200.00

Notwithstanding the above, the maximum amount of this contract cannot exceed Two Hundred Fifty Thousand Dollars (\$250,000) and the Contractor shall only be authorized to perform services after a purchase order has been issued.

20. **Breach.** A party shall be deemed to have breached the Contract if any of the following occurs:— failure to perform in accordance with any term or provision of the Contract;— partial performance of any term or provision of the Contract; or — any act prohibited or restricted by the Contract. For purposes of this Contract, these items shall hereinafter be referred to as a “Breach.”
 - a. Contractor Breach— The Agency shall notify Contractor in writing of a Breach.
 - (1) In event of a Breach by Contractor, the Agency shall have available the remedy of Actual Damages and any other remedy available at law or equity.
 - (2) Liquidated Damages— In the event of a Breach, the Agency may assess Liquidated Damages. The Agency shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the

complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment A and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the Agency in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the Agency pursuant to the indemnity provision or other section of this Contract. The Agency may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the Agency exercises its option to declare a Partial Default, or the Agency terminates the Contract. The Agency is not obligated to assess Liquidated Damages before availing itself of any other remedy. The Agency may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) **Contract Termination**— In the event of a Breach, the Agency may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the Agency. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the Agency may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the Agency at law or at equity. The Contractor shall be liable to the Agency for any and all damages incurred by the Agency and any and all expenses incurred by the Agency which exceed the amount the Agency would have paid Contractor under this Contract. Contractor agrees to cooperate with the Agency in the event of a Contract Termination or Partial Default.

23. **Federal Economic Stimulus Funding.** This Contract requires the Contractor to provide products and/or services that are funded in whole or in part under the American Recovery and Reinvestment Act of 2009, Public Law 111-5, (Recovery Act). The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of the Recovery Act are met and that the Contractor provides information to the State as required.

The Contractor (and any subcontractor) shall comply with the following:

- a. Federal Grant Award Documents, as applicable.
- b. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at www.whitehouse.gov/omb/recovery_default/.
- c. The Recovery Act, including but not limited to the following sections of that Act:
 - (1) Section 1512 – Reporting Requirements. The Contractor must report on use of Recovery Act funds provided through this Contract. Information necessary to meet the reporting requirements will be obtained from the vendor invoice. This information will be made available to the public.
 - (2) Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:
 - i. gross mismanagement,
 - ii. gross waste,
 - iii. substantial and specific danger to public health or safety,
 - iv. abuse of authority, or
 - v. violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a Contract).

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: The Grantee and any subcontractor shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

- (3) Section 902 – Access Of Government Accountability Office. The Contractor shall provide that the Comptroller General and his representatives are authorized:
 - i. to examine any records of the Contractor or any of its subcontractors, that directly pertain to, and involve transactions relating to, this Contract or a subcontract; and
 - ii. to interview any officer or employee of the Contractor or any of its subcontractors regarding such transactions.
 - (4) Section 1514 – Inspector General Reviews. Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under sections 552 and 552a of title 5, United States Code.
 - (5) Section 1515 – Access of Offices of Inspector General to Certain Records and Employers. With respect to this Contract, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:
 - i. to examine any records, of the Contractor or any of its subcontractors, that pertain to and involve transactions relating or pursuant to this Contract; and
 - ii. to interview any officer or employee of the Contractor or any subcontractors regarding such transactions.
 - d. The Contractor agrees to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.
24. The term of this contract shall commence upon execution and continue through September 30, 2010. The term of this contract shall, upon mutual written consent of the parties, be renewable for one additional one-year period, subject to appropriation of funding by the Shelby County Board of Commissioners.

IN WITNESS WHEREOF, the parties hereto have set their signatures for the purposes contained herein, on the day and date first above written.

Executed this _____ day of _____, 2010.

APPROVED: SHELBY COUNTY GOVERNMENT

Contract Administrator/
Assistant County Attorney

Shelby County Mayor

Name of Contractor

Signature of Contractor

CORPORATE ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

Before me, the undersigned Notary Public, in and for the State and County aforesaid, personally appeared _____, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged himself/herself to be president or other officer authorized by appropriate Corporate action and/or Resolution to execute the preceding instrument of the _____, the within named bargainor, a corporation, and that he as such _____, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself/herself as _____.

WITNESS my hand and official seal at office this _____ day of _____, 2010.

Notary Public

My Commission Expires: _____

Attachment A
BREACHES AND ASSOCIATED LIQUIDATED DAMAGES

Breach		Amount	Penalty
1.	Failure to complete any audit and/or reinspection within fifteen business (15) days from the date notified of the job. (Reference Section 2)	Twenty percent (20%) reduction of each audit or reinspection amount (Reference Section 19)	Per incident
2.	Failure to complete any audit and/or reinspection within five (5) business days following the initial fifteen (15) days.	Five percent (5%) additional reduction of each audit or reinspection amount (Reference Section 19)	Per each five (5) day increment